IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 303 OF 1999

1] Ujwala Gorakshnath Shinde
Age about 33 years, Occ. Agri.,
R/o. Deolali Pravara, Tal. Rahuri
dist. Ahmednagar

2] Kum. Sheetal Gorakshnath Shinde
Age 14 years, Occ. Education

3] Kum. Amruta Gorakshnath Shinde
Age 11 years, Occ. Education.

4] Kum. Gauri Gorakshnath Shinde
Age 7 years, Occ. Education

Respondent Nos. 2 to 4 Minors
through their Guardian Mother
applicant No.1, Respdt. Nos. 2 to
4 R/o Deolali Pravara,
Tal. Rahuri, District Ahmednagar ...APPELLANTS
(ORIGINAL APPLICANTS)

Versus

1] Smt. Chandrakala Tripathi W/o
Shri R.C. Tripathi, Age Major,
Occ. Business, R/o Subhashnagar,
Taluka Bhilwara, H.P.A.B.O.B.,
Kathiyan, Pin Code 311 001
Taluka and District Bhilwara
State of Rajasthan

2] Shri Gopalsing s/o Bhairwasing Rathod
Age Major, Occ. Driver
R/o Bhilwara, H.P.A.B.O.B.,
Kathiyan, Pin Code 311 001
Taluka & District Bhilwara,
State of Rajasthan

[Appeal dismissed against respondent No.2
as per Court's order dated 24-06-2008]

3] The Oriental Insurance Company Ltd.
Bhilwara City Branch Office,
Bhilwara, Taluka and Dist. Bhilwara
State of Rajasthan ... RESPONDENTS
(ORIGINAL OPPONENTS)

Mr. V. P. Latange, Advocate for appellants
Mr. V. N. Upadhye, Advocate for respondent No.3

CORAM : M. T. JOSHI, J.
DATE : JANUARY 16, 2015

ORAL JUDGMENT

1. Heard both sides.

2. Aggrieved by grant of lesser compensation than claimed, original claimants have preferred present appeal against the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No.474 of 1992 delivered on 26-02-1999.

3. Gorakshnath Gajanan Shinde died of motor accident on 29-05-1992 on Shrirampur-Kopargaon road near milestone No.5. It was proved before the tribunal that the accident had occurred due to rash and negligent driving of the vehicle

bearing No.RSE-5195 by original respondent No.2 Gopalsing Rathod. Appellants-original applicants in the claim petition had claimed compensation of ₹ 8,00,000/-, however, the tribunal by impugned judgment and award directed original respondents, including insurer of the vehicle, to pay to the original applicants-present appellants compensation of ₹ 2,01,000/- together with interest thereon at the rate of 12% per annum from the date of application till realization. Therefore, present appeal.

4. It was proved before the learned Member of the tribunal that the deceased was 32 years old and was cultivating agricultural land and some of the part of the agricultural land was being used for raising sugar-cane crop. Further, the deceased in partnership with his brother was carrying on grocery shop in the name and style as “Dnyaneshwar Kirana Stores” at Deolali-Pravara village within municipal area.

5. Evidence was led before the learned Member. During cross examination, appellant No.1 admitted that after the demise of her husband, she continued to cultivate the agricultural land. The documents regarding income from sugar-cane crop during life time of deceased and thereafter also, were filed on record. Those documents are at Exhibit-70

to 78 and would show that after demise of the deceased on some occasions while less amount from sugar factory was received, in some years there was higher amount fetched from sugar-cane crop.

6. Similarly, while evidence was led to show that the deceased along with his brother was running a grocery shop within agricultural produce market committee area, all of the documents and assessment order would show that partnership business had earned an income of ₹ 20,080/- for the relevant year. It was also admitted that *kirana* shop was continued to be run even after the death of the deceased.

7. Taking into account all these facts, the learned Member of the tribunal came to the conclusion that due to disruption upon death of Gorakshnath, there must be a loss of monthly income from sugar-cane crop as well as from *kirana* shop the same was estimated to be ₹ 1,800/- per month. Taking into account dependency, one third amount from the income of the deceased was deducted and yearly loss was arrived at ₹ 14,400/-. Multiplier of fifteen was applied and thus, loss of dependency was held to be of ₹ 2,16,000/-.

8. Mr. Latange, learned counsel for the appellants submitted that it was definitely proved before the learned

Member of the tribunal that the deceased was a progressive and industrious farmer as he used to take crop like sugar-cane and also running a business of grocery shop within municipal area. The learned Member, however, has assumed that loss of income is ₹ 1,800/- per month only and deduction of one third towards personal expenses was wrongly calculated though the deceased had left behind four dependents. Further, multiplier is also wrongly applied.

9. Mr. Upadhye, learned counsel for respondent No.3-insurance company submitted that learned Member of the tribunal has taken into account each and every aspect of the matter minutely and estimated the loss of ₹ 1,800/- per month and on other aspects, he supported the reasonings given by the learned Member of the tribunal.

10. On the basis of aforesaid facts on record, following points arise for my determination.

(i) Whether the amount awarded by the learned Member of the tribunal is a just compensation ?

11. My finding to the aforesaid point is in the negative. The appeal is therefore partly allowed for following reasons.

REASONS

12. It should be noted that yearly income from the grocery shop of two brothers was ₹ 20,080/- for the year 1988-1989. Gorakshnath died in the year 1992. As regards cultivation of agricultural land, the documents referred to supra would show that, in fact, on some occasions, there was no loss due to cultivation of land by appellant no.1 though on certain occasions there was reduction in payments received from the sugar factory. In that view of the matter, after taking into account all material on record, total loss was calculated at ₹ 14,400/- per annum.

13. It is to be noted that ultimately, in assessing the compensation the court has to take into consideration the material on record and give its own estimate. In the present case, taking into account over all facts, I do not think that, estimate arrived at by the learned Member is not based on material before him. As regards multiplier, it is not disputed that deceased was 32 years and it is now well established in view of ratio of ***Smt. Sarla Varma Vs. Delhi Transport Corporation*** reported in ***AIR 2009 SC 3104***, that proper multiplier would be sixteen and not fifteen as has been applied by the learned Member of the tribunal.

14. In the case of ***Smt. Sarla Varma Vs. Delhi Transport Corporation*** (supra), it has been held that if number of dependents is between four to six, it should be estimated that the deceased was expending 1/4th of his income on himself. In the present case, learned Member has estimated the said expenses at 1/3rd .

15. Considering all this material on record, interference in the impugned award by learned Member of the Tribunal is required. Computation of compensation payable would thus be as follows.

Monthly income	₹	1,800=00
1/4th deduction towards personal expenses	₹	- 450=00
Net monthly loss	₹	1,350=00
		x 12
Total annual loss	₹	16,200=00
Multiplier		x 16
	₹	2,59,200=00
Non-pecuniary damages/ loss of consortium	₹	+ 10,000=00
Total compensation payable	₹	2,69,200=00

16. Mr. Upadhye, learned counsel for respondent No.3 insurance company submits that taking into account present

trend, interest at the rate of 12% may not be granted on the amount granted by this court in the present appeal. He submitted that present appeal as against driver and co-owner of the offending vehicle has been dismissed and therefore the appeal cannot be prosecuted against the insurance company. For the purpose, he relies on decision of the Supreme Court in the case of ***Oriental Insurance Co. Ltd. Vs. Meena Variyal, 2007 (3) Supreme 136***.

17. However, it should be noted that present appeal is only for enhancement in the compensation. Joint and several liability of present respondent No.3 insurer as well as owner of the vehicle is also decided by the learned Member of the tribunal and there is no appeal against the said award. In view of these facts, in my view, ratio of Oriental Insurance Company Ltd. relied on by learned counsel Mr. Upadhye would not be applicable to the facts of the present case.

18. In the result, the appeal is hereby partly allowed. Respondent No.3 insurance company is directed to pay additional compensation as arrived at herein above along with interest at the rate of 6% per annum on the enhanced compensation from the date of filing of the present appeal till realization of the same. Respondent No.3 shall pay the said

amount within a period of ninety days from the date of this order. Upon failure, respondent No.3 shall be liable to pay interest at the rate of 9% per annum.

19. Appeal is accordingly, disposed of.

(M. T. JOSHI, J.)

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